

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned April 17, 2007

STATE EX REL. GAYE P. v. COREY E.M.

Appeal from the Juvenile Court for Sumner County
No. 81-297 Barry R. Brown, Judge

No. M2007-00624-COA-R9-JV - Filed on April 26, 2007

This appeal involves the statutory right of a biological father to obtain genetic testing to confirm his parentage of a non-marital child. After the State of Tennessee filed suit in the Sumner County Juvenile Court to require him to pay child support, the father requested the court to order genetic testing to establish his parentage even though he had already voluntarily acknowledged that he was the child's father. The juvenile court ordered the testing despite the absence of evidence that the father's voluntary acknowledgment was procured by fraud, but granted the State permission to seek a Tenn. R. App. P. 9 interlocutory appeal. We have determined that the interlocutory appeal should be granted,¹ and that the juvenile court's order must be reversed because of the lack the evidence required by Tenn. Code Ann. § 24-7-113 (2000) that there is a substantial likelihood that the father's voluntary acknowledgment of parentage was obtained by fraud.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Juvenile Court Reversed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Robert E. Cooper, Jr., Attorney General and Reporter, and Juan G. Villaseñor, Assistant Attorney General, for the appellant, State of Tennessee on relation of Gaye P.

Russell E. Edwards, Hendersonville, Tennessee, for the appellee, Corey E.M.

MEMORANDUM OPINION²

¹Pursuant to Tenn. R. App. P. 2, we suspend the application of Tenn. R. App. P. 24, 25 and 29, and find oral argument to be unnecessary pursuant to Tenn. R. App. P. 35(c). *See Hammock v. Sumner Co.*, No. 01A01-9710-CV-00600, 1997 WL 749461 (Tenn. Ct. App. Dec. 5, 1997) (No Tenn. R. App. P. 11 application filed).

²Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I.

Gaye P. gave birth to Corey P.M. on May 12, 2001. Two days later, on May 14, 2001, Corey E.M. and Gaye P. executed a “voluntary acknowledgment of paternity” recognizing Corey E.M. as Corey P.M.’s biological father.

Five and one-half years later, the State of Tennessee filed suit in the Sumner County Juvenile Court seeking to require Corey E.M. to support Corey P.M. financially, to acquire medical insurance for the child, and to pay retroactive child support. Corey E.M. responded by requesting a parentage test and visitation rights if the test established that he was the child’s parent. Corey E.M. never asserted that the voluntary acknowledgment of paternity he signed on May 14, 2001 was obtained through fraud.

Without hearing any evidence in the matter, the juvenile court entered an order on February 21, 2007 granting Corey E.M.’s request for genetic testing as long as Corey E.M. paid for the test. The State promptly filed a Tenn. R. Civ. P. 59.04 motion to alter or amend pointing out that Tenn. Code Ann. § 24-7-113 (2000) did not empower the juvenile court to order genetic testing five years after the execution of a voluntary acknowledgment of parentage in the absence of allegations that the acknowledgment was procured by fraud. The juvenile court denied the State’s motion but granted the State permission to pursue a Tenn. R. App. P. 9 appeal. The court later entered a supplemental finding of fact explaining that it had ordered the genetic testing “to insure that the relationship between the child and Respondent/father be as positive as possible.”

The State filed its application for permission to appeal on March 21, 2007, and Corey E.M. filed his answer opposing the State’s application on April 10, 2007. We concur with the juvenile court’s determination that this case is a proper one for an interlocutory appeal. We have also determined that the State’s petition and Corey E.M.’s response, as well as the papers attached to the State’s petition provide ample information to decide the issue presented by this case.

II.

The State contends that the juvenile court erred by ordering parentage testing without first conducting an evidentiary hearing as required by Tenn. Code Ann. § 24-7-113 to determine if there is a substantial likelihood that the voluntary acknowledgment of paternity was procured by fraud. This issue presents a question of law which this court will review de novo without a presumption of correctness. *Kilgore v. NHC Healthcare*, 134 S.W.3d 153, 156 (Tenn. 2004); *Glanton v. Lord*, 183 S.W.3d 391, 395 (Tenn. Ct. App. 2005).

Tenn. Code Ann. § 24-7-113 establishes a simplified procedure for unmarried fathers to legally establish their parentage without the intervention of the court, by simply executing a voluntary acknowledgment of paternity. *In re C.A.F.*, 114 S.W.3d 524, 528 (Tenn. Ct. App. 2003). The acknowledgment, signed by both the father and mother, becomes the basis for establishing a child support order without the need for a hearing on paternity. “A voluntary acknowledgment of paternity . . . shall constitute a legal finding of paternity on the individual named as the father of the

child in the acknowledgment, subject to rescission as provided in subsection (c).³ The acknowledgment, unless rescinded pursuant to subsection (c), shall be conclusive of that father's paternity without further order of the court." Tenn. Code Ann. § 24-7-113.

Tenn. Code Ann. § 24-7-113(e) provides for relief from a voluntary acknowledgment of paternity in certain limited circumstances:

(1) If the voluntary acknowledgment has not been rescinded pursuant to subsection (c), the acknowledgment may only be challenged on the basis of fraud, whether extrinsic or intrinsic, duress, or material mistake of fact.

(2) The challenger must institute the proceeding upon notice to the other signatory and other necessary parties including the Title IV-D agency within five (5) years of the execution of the acknowledgment, and if the court finds based upon the evidence presented at the hearing that there is substantial likelihood that fraud, duress, or a material mistake of fact existed in the execution of the acknowledgment of paternity, then, and only then, the court shall order parentage tests. Such action shall not be barred by the five (5) year statute of limitations where fraud in the procurement of the acknowledgment by the mother of the child is alleged and where the requested relief will not affect the interests of the child, the state, or any Title IV-D agency. Nothing herein shall preclude the challenger from presenting any other form of evidence as a substitute for the parentage tests if it is not possible to conduct such tests.

Tenn. Code Ann. § 24-7-113(e) limits not only the circumstances under which a voluntary acknowledgment of paternity can be set aside, but also the circumstances under which a court may order parentage testing during the course of a proceeding involving a challenge to a voluntary acknowledgment of paternity. In such a proceeding, a court may order parentage testing only if the court finds, based upon the evidence presented, that there is a substantial likelihood that fraud, duress, or a material mistake of fact existed in the execution of the voluntary acknowledgment of paternity. "[T]hen, and only then, the court shall order parentage tests." Tenn. Code Ann. § 24-7-113(e).

Where, as in this case, more than five years have passed since the execution of the voluntary acknowledgment of paternity, a court's authority to order parentage testing is even more limited. A court may order parentage testing beyond the five-year statute of limitations only where fraud in the procurement of the acknowledgment by the mother of the child is alleged and where the requested relief will not affect the interests of the child, the State, or any Title IV-D agency.

³Tenn. Code Ann. § 24-7-113(c) provides a means to rescind a voluntary acknowledgment of paternity within sixty days of its execution.

Corey E.M. asserts he cannot make an allegation of fraud without first conducting parentage testing. Had his pleadings alleged fraud or facts which would have supported a finding of fraud, we would be inclined to agree and to permit the testing. However, the pleadings do not even allege fraud, and there is no indication from the filings before this court that Corey E.M. would be able to prove fraud even if the parentage testing were allowed and even if the test showed he was not the biological father. Absent even an allegation of fraud, the trial court had no authority under Tenn. Code Ann. § 24-7-113 to order parentage testing.

We recognize the juvenile court's stated reason for ordering parentage testing related to insuring a positive relationship between Corey E.M. and the child rather than to preventing the setting of child support. Nevertheless, the request for testing was made in the course of a support proceeding and as part of an effort to challenge a voluntary acknowledgment of paternity. As such, the request must be considered in light of the requirements of Tenn. Code Ann. § 24-7-113. Our decision, however, concerns only an attempt to obtain parentage testing by court order as part of a proceeding challenging a voluntary acknowledgment of paternity. It does not foreclose Corey E.M. from obtaining parentage testing on his own without a court order should the parties' custody and visitation arrangement allow him an opportunity to do so. Likewise, we express no opinion concerning whether the juvenile court could order genetic testing in some other proceedings and for some other purpose such as ensuring the child has an accurate family medical history. The results of such testing could not, however, be used to challenge the voluntary acknowledgment of paternity or to affect Corey E.M.'s child support obligation absent a finding of fraud as required by Tenn. Code Ann. § 24-7-113(e).

III.

The Tenn. R. App. P. 9 application for permission to appeal is hereby granted. The trial court's order for parentage testing is reversed, and the case is remanded to the trial court further proceedings. Corey E.M. is taxed with the costs for which execution may issue.

WILLIAM C. KOCH, JR., P.J., M.S.